



The Atchison, Topeka and Santa Fe Railway Company



1700 East Golf Road
Schaumburg, Illinois 60173-5860

2-337A006

18016
RECORDATION NO. FILED 1425

PLEASE STAMP AND RETURN TO SANTA FE

DEC 2 1992-11 55 AM
INTERSTATE COMMERCE COMMISSION

December 1, 1992

VIA PERSONAL DELIVERY

Mr. Sidney L. Strickland, Jr.
Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Re: Thrall Car Manufacturing Company
Interim Use Agreement with The Atchison, Topeka
and Santa Fe Railway Company,
dated November 24, 1992

Dear Mr. Strickland:

Enclosed herewith please find an original and one counterpart of the document described below to be recorded pursuant to Section 11303 of Title 49 of the United States Code.

This document is a primary document, Interim Use Agreement, dated as of November 24, 1992, between Thrall Car Manufacturing Company and The Atchison, Topeka and Santa Fe Railway Company.

The names and addresses of the parties to this document are:

Santa Fe, as Lessee:

The Atchison, Topeka and Santa Fe Railway Company
1700 East Golf Road
Schaumburg, Illinois 60173-5860

Thrall, as Lessor:

Thrall Car Manufacturing Company
111 West Monroe Street
Chicago Heights, Illinois 60411

The equipment covered by the Interim Use Agreement is described in the first "Whereas" paragraph on page 1 of the document.

Mr. Sidney L. Strickland, Jr.
December 1, 1992
Page 2

For the convenience of the parties, I have enclosed three (3) additional copies of the document, which I would like to have returned to me bearing the recordation information. In addition, please find a pre-addressed, stamped envelope for the convenience of returning the copies to Santa Fe.

Enclosed please find Check No. 30013588, dated November 30, 1992, for the amount of \$15.00 for payment of the Commission's prescribed recordation fee.

If you have any questions or comments concerning this request, please contact Mr. Craig N. Smetko at 708/995-6819.

Very truly yours,



Jeffrey R. Moreland
Vice President-Law and
General Counsel

JRM/CNS:lm
Enclosures

Interstate Commerce Commission
Washington, D.C. 20423

12/2/92

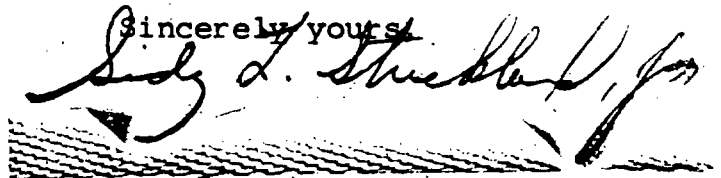
OFFICE OF THE SECRETARY

Jeffrey R. Moreland
The Atchison, Topeka And Santa Fe Railway Co.
1700 East Golf Road
Schaumburg, Illinois 60173

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 12/2/92 at 11:55am , and assigned recordation number(s). 18016

Sincerely yours,



Secretary

SIDNEY L. STRICKLAND, JR.

Enclosure(s)

SE-30
(7/79)

18016

RECORDATION NO

FILED 1423

DEC 2 1992 - 11 55 AM

INTERSTATE COMMERCE COMMISSION

DEC 2 11 46 AM '92
MOTOR OPERATING UNIT

INTERIM USE AGREEMENT

BY AND BETWEEN

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

AND

THRALL CAR MANUFACTURING COMPANY

Effective as of November 24, 1992

THIS AGREEMENT, dated as of November 24, 1992, between THRALL CAR MANUFACTURING COMPANY, an Illinois corporation ("Thrall"), and THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Delaware corporation ("ATSF").

W I T N E S S E T H:

WHEREAS, Thrall and ATSF contemplate entering into an agreement dated as of November 25, 1992 (the "Purchase Agreement") calling for Thrall to manufacture and deliver to ATSF, and ATSF to accept and pay for five hundred twenty-five (525) fully enclosed GM tri-level autoracks (the "Tri-Level Autoracks"), four hundred fifty-nine (459) fully enclosed GM bi-level autoracks (the "Bi-Level Autoracks"), and sixteen (16) 20' 2" fully enclosed Chrysler tri-level autoracks (the "Hi-Tri Autoracks") (collectively, the "Proposed Autoracks"); and

WHEREAS, ATSF intends to finance the purchase of the Proposed Autoracks from Thrall pursuant to one or more permanent forms of financing (the "Financing"), but deliveries of certain of the Proposed Autoracks (the "Autoracks") are scheduled to begin prior to the time ATSF will have completed said Financing; and

WHEREAS, ATSF desires that it be permitted to use the Autoracks pending establishment of such Financing, solely as a bailee thereof, and Thrall is willing to grant such temporary custody and possession to ATSF upon the terms and conditions hereinafter provided;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Thrall, as lessor, hereby agrees to deliver the Autoracks to ATSF, as lessee, FOB Thrall's Winder, Georgia, or Chicago Heights, Illinois, plant, as of the date each of them is released from manufacturing, for acceptance by ATSF in Winder, Georgia, or Chicago Heights, Illinois, respectively, for a period ending on the following dates:

Autoracks

The first 130 Bi-Level
Autoracks or such lesser
number as have been
delivered on or before
December 23, 1992

**End of the
Interim Use Period**

December 30, 1992

525
459
16
1000

Autoracks

End of the
Interim Use Period

The remaining Bi-Level
Autoracks

March 31, 1993, or the
date which is ten (10) days
after the delivery
of the last Bi-Level
Autorack, whichever is
later

The first 200 Tri-Level
Autoracks

May 31, 1993, or the
date which is ten (10) days
after the delivery
of the 200th Tri-Level
Autorack, whichever is
later

The second 200 Tri-Level
Autoracks

June 30, 1993, or the
date which is ten (10) days
after the delivery
of the 400th Tri-Level
Autorack, whichever is
later

The remaining 125 Tri-Level
Autoracks and the
16 Hi-Tri Autoracks

July 30, 1993, or the
date which is ten (10) days
after the delivery
of the last Tri-Level
Autorack or Hi-Tri Autorack,
whichever is later, but in
no event later than
September 30, 1993,

(for each Autorack, respectively, the "Termination Date"), time being of
the essence.

2. Upon receipt of each Autorack in Winder, Georgia, or Chicago Heights, Illinois, ATSF's representative shall execute a Certificate of Acceptance, in the form of Exhibit A hereto, acknowledging the receipt of delivery of each such Autorack under this Agreement. During the term hereof for so long as the purchase price shall not have been paid, title to the Autoracks shall remain in Thrall with ATSF's rights and interests therein

being solely that of possession, custody and use as bailee hereunder. Transfer of title shall be effected only at the time of Thrall's delivery of bills of sale to the party which has paid the purchase price therefor.

3. On or before each Termination Date, ATSF agrees to pay to Thrall, as rent for the Autoracks used hereunder prior to such Termination Date, the sum of One Dollar (\$1.00).
4. ATSF shall permit no liens or encumbrances (other than the usual interchange of traffic rules) of any kind to attach to the Autoracks and it agrees to:
 - (a) indemnify and save Thrall harmless from any and all claims, expenses or liabilities of whatsoever kind, including but not limited to attorneys' fees and costs, which may arise by, through or under ATSF during the time any of the Autoracks are in the possession of ATSF; and
 - (b) pay any and all taxes (excluding any tax measured by Thrall's net income and any franchise, capital, net worth or similar tax imposed on Thrall, or any tax imposed in lieu of any of the foregoing), fines, charges and penalties that may accrue or be assessed or imposed upon the Autoracks of Thrall, because of Thrall's ownership or because of the use, operation, management or handling of the Autoracks during the term of this Agreement.

The obligations of ATSF described in this Section 4 shall survive termination of this Agreement.

5. ATSF shall, at its option, repair or promptly pay to Thrall the purchase price (as set forth in the Purchase Agreement) for any of the Autoracks which may be damaged or destroyed by any cause during the term of this Agreement.
6. ATSF acknowledges that it takes its possessory interest in the Autoracks subject to those provisions of the Purchase Agreement relating to Warranty, exclusion of certain warranties, remedies (and limitations of remedies) and limitation of liability and indemnities.
7. Prior to delivery under this Agreement, each Autorack shall be numbered with a road number, and there shall be plainly, distinctly, permanently and conspicuously marked upon each side of each such Autorack, the following legend in letters not less than one inch in height:

**OWNERSHIP SUBJECT TO A SECURITY AGREEMENT
FILED WITH THE INTERSTATE COMMERCE COMMISSION**

ATSF hereby agrees to indemnify Thrall against any liability, loss or expense incurred by it as a result of placing of the aforementioned markings on the Autoracks. If during the term of this Agreement such markings shall at any time be removed, defaced or destroyed, ATSF shall promptly cause the same to be restored or replaced.

8. In the event ATSF shall, in violation of its obligations under the Purchase Agreement, fail to accept and pay (or cause payment to be made) for the Autoracks, or such payment is not made prior to the Termination Date and with respect thereto, Thrall may, in addition to any other remedies it may have, enter upon the premises of ATSF or such other premises where the Autoracks may be and take possession of all or any Autoracks, and thenceforth hold, possess and enjoy the same free from any right of ATSF, or its successors or assigns. In such event, Thrall may use the Autoracks for any purposes whatsoever, and may sell and deliver the Autoracks to others upon such terms as Thrall may see fit in its sole discretion, it being understood and agreed that ATSF shall remain liable to Thrall under the Purchase Agreement for: (a) an amount equal to any difference in the price paid by such other parties and the purchase price due from ATSF under the Purchase Agreement (less the value of Thrall's use of the Autoracks), plus (b) an amount equal to all expenses of Thrall incident to such sale including, but not limited to, the expenses of withdrawing the Autoracks from the service of ATSF, providing for the care and custody of the Autoracks, preparing the Autoracks for sale, and selling the Autoracks. ATSF shall pay the foregoing amounts from time to time upon demand by Thrall.
9. ATSF and Thrall each represent and warrant to the other that:
 - (a) it is a duly organized and validly existing corporation in good standing under the laws of its state of incorporation, is duly qualified to do business in such jurisdictions as are necessary to carry out the transactions contemplated by this Agreement, and has power and authority to own its properties and carry on its business as now conducted;
 - (b) the execution and delivery of this Agreement is within its corporate authority, has been authorized by proper corporate proceedings and will not contravene any provision of law or of its

charter or by-laws nor contravene or constitute a default under the provisions of any agreement or other instrument being upon it, and this Agreement is a valid and binding obligation of it enforceable against it in accordance with its terms, subject to applicable insolvency, bankruptcy or moratorium laws and general equitable principles;

- (c) the rights of Thrall as herein set forth and the title of Thrall to the Autoracks are senior to the lien of any mortgage, security agreement or other instrument to which the party making the representation or warranty is a party; and
 - (d) No governmental authorizations, approvals or exemptions are required of it for the execution and delivery of this Agreement or for the validity and enforceability hereof against it or the bailment of the Autoracks hereunder on the terms and conditions provided herein, or, if any such authorizations are required of it, they have been obtained; and if any such shall hereafter be required of it, they will promptly be obtained.
- 10. ATSF agrees that the execution by Thrall of this Agreement or the delivery by Thrall of the Autoracks as contemplated by this Agreement, shall not relieve ATSF of its obligations to accept, take and pay for the Autoracks in accordance with the terms of the Purchase Agreement.
 - 11. The execution of a Certificate of Acceptance in the form of Exhibit A hereto pertaining to any such Autorack shall constitute acceptance of such Autorack hereunder, and any warranty or other time period set forth in the Purchase Agreement applicable to such Autorack shall be deemed to commence from the date of Thrall's release of the Autoracks from manufacturing in Winder, Georgia, or Chicago Heights, Illinois.
 - 12. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

IN WITNESS WHEREOF, each party hereto has caused this Interim Use Agreement to be executed by its authorized representative in Schaumburg, Illinois, this 24th day of November, 1992.

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY

Attest:

By:

Title: AW Rees
VICE PRESIDENT-QUALITY

[CORPORATE SEAL]

By:

Craig N. Smetko
Assistant Secretary

THRALL CAR MANUFACTURING COMPANY

Attest:

By:

Title: Y.S. McNally
VICE PRESIDENT-INTERMODAL PRODUCTS

[CORPORATE SEAL]

By:

Michael J. Casey
Assistant Secretary

EXHIBIT A

Certificate of Acceptance

This is to certify that the following equipment covered by that certain Purchase Agreement dated as of _____, 1992 has been accepted in _____ [Winder, Georgia, or Streater, Illinois] by The Atchison, Topeka and Santa Fe Railway Company ("ATSF") under the Interim Use Agreement dated _____, 1992, between Thrall Car Manufacturing Company and ATSF this _____ day of _____, 1992.

Description of Equipment

Number of Units

Description

Road Numbers

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY

By: _____

Title: _____